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A NOTE ON M. HAURIOU. — M. Hauriou is well known to every student of French public law. His "Précis de Droit Administratif" is perhaps the most widely used of all such recent text-books. His "Principes de Droit Public" is most adequately summarized by him in this volume; but it is perhaps worth while to add that it has a special importance, apart from its intrinsic merits, from its obvious and not unsuccessful effort to reconcile the conflicting theories of such irreconcilable antagonists as MM. Esmein and Duguit. But it is perhaps in another direction that M. Hauriou can lay the greatest claim to the gratitude of the technical lawyer. For nearly twenty-five years he has written the notes on administrative law in "Sirey," and in some of them, most notably in those relating to the theory of state responsibility, it is hardly too much to say that he has legislated. His special studies, as, most notably, his essay on Duguit, and his very able analysis of the doctrine of national sovereignty are all of them at once distinguished and suggestive. M. Hauriou has also written on sociology. When it is remembered that this solid production is the work of a busy dean of an important law school, the energy it represents is difficult to exaggerate. The exact bearing of M. Hauriou's theories is no easy task to indicate. He has been profoundly influenced by Herbert Spencer, whose work was just beginning to exercise its full effect on France when he began to write. It is this, perhaps, which explains the search after the discovery of a mechanical equilibrium in the social order which is traceable in all that he writes. It is this, too, which seems to explain his rejection of natural law even in a synthesis in which its unconscious acceptance is barely concealed in the hypothesis of the "institution."[1] Nor is the task

[1] *Cf.* the very able criticism of G. PLATON, POUR LE DROIT NATURAL (1911).

made easier by M. Hauriou's extraordinary power of reception. No new idea seems to come to the birth without being swept into the wide ambit of his system. No science is too remote for him to examine it in the effort at discovering illustrative analogies. He seems definitely to have rejected the unsatisfactory positivism in which M. Duguit still takes refuge.[2] He insists upon the unchanging character of the categories, order and disorder, justice and injustice, of which the law must take account, even while he denies the permanent character of their content.[3] He has realized that law is preëminently a social science, and that in this aspect its sociological character is fundamental. In this respect, he seems clearly to belong to the realist school of which M. Duguit is perhaps the most distinguished member. But he explains the background of his attitude in an atmosphere of metaphysiological metaphor which M. Duguit would hardly understand. The lawyer meets with some concern such phrases as "social tissue," with its constituent "positive" tissues of the family and property, "metaphysical tissues" such as the law, and "material tissues" such as organization.[4] It is true that these somewhat mysterious entities lead to the recognition of liberty, equality and fraternity as the essential factors of progress;[5] but one is left wondering if the path of proof must of necessity be so complex. Certain conceptions of his thought possess, indeed, a definition less puzzling. He has set out clearly the significance of corporate personality.[6] He has insisted in striking fashion on the necessary submission of the state to objective law. He has shown with high distinction the way in which law emerges as the result of a balance between conflicting and coöperating forces.[7] His work has demonstrated the danger of a régime in which the individual personality is absorbed by the fabric of the state.[8] The somewhat mysterious result of his whole legal edifice is perhaps the outcome of his own eager insistence upon the necessary complexity of social relations, perhaps also from his unwillingness to set out his principles as a system apart from the multitude of facts which tend to obscure their bearing. No student of law, in any case, may afford to neglect an effort so rich in its possibilities and so suggestive in its outcome.

EFFECT OF CHANGED CONDITIONS UPON EQUITABLE SERVITUDES. — In *Tulk* v. *Moxhay*,[1] which is the foundation of the law of equitable servitudes, Lord Cottenham evidently thought purely in terms of specific performance. He conceived that he was enforcing the covenant imposing the restrictions against one not a party thereto, who had

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[2] *Cf.* his LES IDÉES DE M. DUGUIT, RECUEIL DE LÉGISLATION DE TOULOUSE, Vol. VII, 15–16.

[3] *Cf.* PRINCIPES DE DROIT PUBLIC (1910).

[4] *Cf.* LA SCIENCE SOCIALE TRADITIONELLE (1896), 264.

[5] *Ibid.*, 49 *ff.*

[6] PRINCIPES DE DROIT PUBLIC (1910), 639–93.

[7] *Ibid.*, chap. I.

[8] *Cf.* especially, *Ibid.*, 366–414 and 471–594.

[1] 2 Phil. 774 (1848).